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13 UNITED STATES BANKRUPTCY COURT
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15 NORTHERN DISTRICT OF CALIFORNIA
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17 SAN JOSE DIVISION
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19 In re:) CASE NO. 13-55244 ASW
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21 3616 ASSOCIATES, LLC,) Chapter 11
22)
23) **MEMORANDUM OF POINTS AND**
24) **AUTHORITIES IN SUPPORT OF**
25 Debtor in Possession.) **MOTION FOR VOLUNTARY**
26) **DISMISSAL OF CHAPTER 11 CASE**
27)
28) Date: August 28, 2014
Time: 1:15 p.m.
Place: 280 S. First Street, Courtroom 3020
San Jose, CA 95113
Judge: Honorable Arthur S. Weissbrodt

29 **I. INTRODUCTION**

30 Debtor in Possession 3616 ASSOCIATES, LLC (“Debtor”) request this Court dismiss
31 its Chapter 11 case, pursuant to 11 U.S.C. § 1112(b)(4)(J), based on its inability to create a
32 confirmable plan.

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II. FACTUAL BACKGROUND

On October 2, 2013, Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code. Debtor is a single member LLC. Debtor is the owner of only one asset, a single family residential property located at 2194 White Sands Drive, South Lake Tahoe, California 96150 (the "Property"). The Property has been utilized from the commencement of this case as solely a vacation rental property.

The value of the Property is likely approximately \$1,500,000. Even with that value, the Property is significantly below the value of the secured debt against the Property. Chase holds the first mortgage against the Property, in an amount over \$2,200,000. Further, secured creditor Sandy McPherson ("McPherson") maintains a second lien against the Property in an amount over \$250,000 (although the Court issued an order on June 4, 2014, based on a stipulation between Debtor and McPherson based on the treatment of McPherson's secured claim in this case).

Debtor was hoping to work out a settlement through this case on the first loan on the Property with Chase. However, as Chase's attorney has specified to this Court at the most recent Status Conference, it is not willing to entertain any settlement offers on the Property. The reason that Chase has stated its reluctance to enter into any such agreement is that the first loan on the Property is between Chase and Jeff Wyatt, the principal owner of Debtor, and not between Chase and Debtor.

Given Chase's stance, and the continuing costs of this Chapter 11 case, Debtor seeks to have this case dismissed, as it is not, without Chase's willingness to enter into any agreement on the treatment of Chase's claim with Debtor, able to formulate a plan of reorganization.

III. DISCUSSION/ANALYSIS

Dismissal or conversion of a Chapter 11 case requires a two-step analysis; first, whether cause exists to dismiss or convert the case; and second, determination of which, either dismissal or conversion, is in the "best interests of the creditors and the estate." *In re AVI, Inc.*, 389 B.R. 721, 729 (9th Cir. B.A.P. 2008).

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